

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 16th Floor
Sacramento, California 95814**

CALIFORNIA CODE OF REGULATIONS, TITLE 10

CHAPTER 5, SUBCHAPTER 3

[NOTE: All Regulation text is new and is being added to Title 10, California Code of Regulations.]

ADOPT ARTICLE 9.8 TO READ:

Article 9.8 Workers Compensation Deductibles and Loss Reserves.

Section 2509.80. Authority and Purpose.

This article is promulgated pursuant to authority granted to the Insurance Commissioner under section 11736.5 of the California Insurance Code. The purpose of this article is to establish those forms of collateral or security that an insurer may designate to secure the deductible amount of any policy of workers' compensation insurance and to establish the basis for reserves and the recognition of receivables for insurers writing workers' compensation deductible policies. Workers' compensation insurers are obligated to pay all claims in full as if they are first dollar claims, and the deductible establishes only a legal obligation of reimbursement by the insured employer to the workers' compensation insurer. This article specifies that loss and loss adjustment expense reserves and the required deposits for workers' compensation deductible policies shall be established gross of the deductibles and allows for credit against those required deposits for collateral, as specified in the article, obtained from insured employers by the workers' compensation insurer.

Note: Authority cited: Section 11736.5, Insurance Code. Reference cited: Sections 11691, 11735 and 11736.5, Insurance Code.

Section 2509.81. Definitions.

For purposes of this article the following definitions shall apply:

(a) "Assets held in trust" means assets obtained as collateral or security in the form of cash; investments as authorized as general investments under Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 of the Insurance Code; readily marketable securities acceptable to the insurance commissioner that are listed on U.S. national or principal regional securities exchanges; or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as

defined in subdivision (a) of Section 922.7 of the Insurance Code, in the name of the workers' compensation insurer and held in this state in trust in a form acceptable to the Commissioner at a qualified depository with the workers' compensation insurer as trustee and the California Insurance Commissioner as an additional beneficiary.

(b) "Collateral" or "security" means the property or assets given to secure the obligation of an insured employer for reimbursement or payment of the deductible amount, or amount agreed to be paid of a workers' compensation claim, under the workers' compensation deductible policy.

(c) "Qualified depository" means a qualified depository as set forth in subparagraph (2) of subdivision (a) of Insurance Code section 1104.9 that is located in this state.

(d) "Worker's compensation deductible policy" means one, or any combination of more than one, policies, endorsements, contracts, or security agreements in which the employer who is insured for its workers' compensation liability has agreed to reimburse the workers' compensation insurer for losses incurred up to the deductible amount elected or payments made up to a specified dollar amount in connection with the workers' compensation insurance coverage or agreed with the workers' compensation insurer to either pre-fund the initial portion, or some amount thereof, of any potential workers' compensation claim, or the potential expenses related to any claim, under the policy up to a specified dollar amount.

(e) "Workers' compensation insurer" means any insurer that is or is required to be admitted to transact workers' compensation insurance in the State of California and the State Compensation Insurance Fund.

Note: Authority cited: Section 11736.5, Insurance Code. Reference cited: Sections 922.7(a), 1104.9(a)(2), 1170 *et seq.*, 11691, and 11736.5, Insurance Code.

Section 2509.82. Deposits and forms of security that workers' compensation insurers may use to secure deductible policies.

(a) Workers' compensation insurers shall calculate deposit requirements for workers' compensation deductible policies pursuant to Insurance Code section 11691 on the same basis as policies providing first dollar coverage and pursuant to the requirements of this article.

(b) A workers' compensation insurer shall receive credit against the deposit requirements of Insurance Code section 11691 for that portion of its workers' compensation policy loss and loss adjustment expense reserves related to workers' compensation deductible policies for which the workers' compensation insurer has obtained assets held in trust from the insured employer as collateral for any workers' compensation deductible policies up to the value of the assets held in trust.

(c) This section shall not apply to the State Compensation Insurance Fund.

Note: Authority cited: Section 11736.5, Insurance Code. Reference cited: Sections 11691 and 11736.5, Insurance Code.

Section 2509.83. Reserve requirements for workers' compensation deductible policies.

(a) Workers' compensation insurers shall establish loss and loss adjustment expense reserves for workers' compensation deductible policy losses and claims pursuant to the requirements set forth in section 923.5 and Article 1 (commencing with section 11550) of Chapter 1 of Part 3 of Division 2, and of the Insurance Code on the same basis as policies providing first dollar coverage and pursuant to the requirements of this article.

(b) For purposes of establishing loss and loss adjustment expense reserves for the three (3) most recent years of coverages for workers' compensation deductible policies pursuant to section 923.5 and Article 1 (commencing with section 11550) of Chapter 1 of Part 3 of Division 2 of the Insurance Code, earned premium shall be established using the estimated annual premium for full coverage without a deductible.

(c) The premium for a workers' compensation deductible policy shall be adjusted to reflect the workers' compensation insurer's audit premiums, subject to the Commissioner's examination and audit.

Note: Authority cited: Sections 923.5 and 11736.5, Insurance Code. Reference cited: Section 923.5, 11550 *et seq.*, 11558, and 11736.5, Insurance Code.

Section 2509.84. Commissioner's right to examine and audit collateral and reserves for workers' compensation deductible policies.

The Commissioner may examine and audit the workers' compensation insurer's assets held in trust and the establishment of loss and loss adjustment expense reserves for workers' compensation deductible policies for the purpose of verifying compliance with this article in addition to all other rights and duties of the commissioner.

Note: Authority cited: Sections 730 and 11736.5, Insurance Code. Reference cited: Sections 730 and 11736.5, Insurance Code.